IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

CRP.No. 365 of 2007()

AGAINST THE ORDER DATED 12/03/2007 IN EP 396/2005 IN OS.194/2003 of PRINCIPAL SUB COURT,ERNAKULAM

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REVN. PETITIONER: JUDGMENT DEBTORS 1 & 2:

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1. M/S. RON MARITIME LTD.,
   REGISTERED OFFICE AT 1ST FLOOR, "LAKSHMI HOUSE",
   PERUMANNOOR JETTY ROAD, WILLINGTON ISLAND,
   KOCHI-682 003,REPRESENTED BY ITS MANAGING DIRECTOR
   K.P. BENNY ROHAL.

2. K.P. BENNY ROHAL,
   S/O. LATE K.N.PRABHAKARAN, "SREE RANJINI",39/2763,
   ILLOM ROAD, ERNAKULAM, KOCHI-682 016.

BY ADV. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN

RESPONDENTS: DECREE HOLDER AND JUDGMENT DEBTORS 3 & 4:

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1. THE FEDERAL BANK LTD.,
   BROADWAY BRANCH, ERNAKULAM, REPRESENTED BY ITS
   BRANCH MANAGER.

2. SRI. KURIAKOSE P.MANI, S/O.P.J.MANI,
   PUTHOOR HOUSE, PERUVA P.O., KOTTAYAM DISTRICT.

3. SRI.K.SATHEESAN, S/O.KRISHNA MENON,
   KUTTIKK
   ATTU HOUSE, EROOR P.O., TRIPUNITHURA,
   ERNAKULAM DISTRICT.

BY ADV. SRI.K.ABRAHAM LAL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN , J

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C.R.P NO. 365 OF 2007

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Dated this the 20th day of August, 2007.

JUDGMENT

This Civil Revision Petition is preferred against the order of the Subordinate Judge, Trivandrum in E.P. No. 396/2005 in O.S. No. 194/2003. As per the said order, the executing court fixed the price at Rs. 12 lakhs and directed the property to be proclaimed and sold on 23.05.2007. Meanwhile the writ petitioner rushed to the court and obtained a stay by deposit of Rs.1 lakh. It is the admitted fact that the property which is brought to sale is the mortgaged property. It is the settled principle that the mortgaged property cannot be truncated and it is to be sold as a whole and not in loose. It is seen that the same objections are raised regarding the valuation of the property and it is submitted that in paragraph 14 of the counter statement that the present market value will be around Rs.20 lakhs. Under Order XXI Rule 66 proviso, the court need not fix the upset price but it will be sufficient if value shown by the decree holder as well as the judgment debtor is shown in the proclamation. But when sale is conducted as per Order XXI Rule 72 A the stipulations made therein has to be followed. There is some intention for the judgment debtors to wipe off the law as

stated earlier. The draft proclamation does not disclose the value shown by the judgment debtor. It is a defect which is curable. So sale can be ordered after curing the defects and if they commit breach of the following terms which I incorporate:

i. The writ petitioners shall pay an amount of Rs.1 lakh to the decree holder on or before 22.09.2007.

ii. They must pay the balance amount in three equal instalments commencing from 22.10.2007.

iii. In case of default of payment of Rs.1 lakh on or before 22.09.2007 or default of any instalments, the decree holder-bank will be at liberty to proceed with the sale after incorporating the value shown by the judgment debtor also in the draft proclamation by the decree holder and if under Rule 72 A by complying with the conditions thereon.

2. In order to enable the writ petitioners to pay off all the liability the sale shall stand deferred and it shall be revived if there is breach as mentioned above. It is needless to say that whatever amount is deposited is permitted to be withdrawn by the decree holder.

The Civil Revision Petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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